

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)

MICHAEL ALAN CHAVIN, M.D.)

Case No. 16-2013-230523

Physician's and Surgeon's)
Certificate No. G59872)

Respondent)

_____)

DECISION

The attached Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 8, 2014.

IT IS SO ORDERED: May 9, 2014.

MEDICAL BOARD OF CALIFORNIA



Barbara Yaroslavsky Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL ALAN CHAVIN, M.D.,

Physician's and Surgeon's Certificate
No. G 59872

Respondent.

Case No. 16-2013-230523

OAH No. 2013101028

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on March 6, 2014, in Oakland, California.

Deputy Attorney General Joshua M. Templett represented complainant Linda K. Whitney, the former Executive Director of the Medical Board of California, Department of Consumer Affairs.

Kevin D. Cauley, Attorney at Law, represented respondent Michael Alan Chavin, M.D., who was present.

The record closed and the matter was submitted on March 6, 2014.

FACTUAL FINDINGS

1. On April 13, 1987, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 59872 to respondent Michael Alan Chavin, M.D. The license is delinquent, with an expiration date of November 30, 2012.

2. On May 31, 2013, complainant Linda K. Whitney, acting in her official capacity at that time as Executive Director of the Board, issued an accusation against respondent. The accusation alleges that respondent's California certificate is subject to discipline because of actions taken by the Tennessee Board of Medical Examiners against his Tennessee medical license.

Action by the Tennessee Board

3. On January 4, 2000, the Tennessee Board of Medical Examiners (Tennessee Board) issued to respondent License Number MD32281.

4. Since 2000, respondent has owned, operated and provided medical services in a Tennessee Certified Pain Management Clinic – Morristown Pain Consultants – in Morristown, Tennessee. In his practice, respondent diagnoses and treats chronic pain, and provides medical services to patients who are addicted to drugs.

5. On January 30, 2013, the Tennessee Board issued an Agreed Order against respondent's medical license.

In the Agreed Order, the Tennessee Board made three findings of misconduct by respondent.

a. It found that

[d]uring the course of [respondent's] practice of medicine, over the last several years and strictly within the confines of his practice, [respondent] has conducted himself towards his staff in a manner that was disrespectful and disruptive of the practice environment and that, in addition to being verbally inappropriate to patients, reflected potential anger management issues.

b. It found that respondent had performed several lumbar facet and joint block injections on his wife, implanted a spinal cord stimulator in her in February 2010, and revised the placement of the stimulator in May 2010, in violation of the Code of Medical Ethics of the American Medical Association.

c. And it found that respondent "accessed an employee's controlled substances monitoring database information when she failed a urine drug screen, admitted to other personnel that she could not pass a subsequent one and upon representation that she intended to enter into this Suboxonic treatment program." The Tennessee Board determined that this conduct was "unprofessional, dishonorable or unethical" under the Tennessee Medical Practice Act.

The Tennessee Board reprimanded respondent's license. In 2012, before the Tennessee Board took action against his license, respondent had on his own initiative submitted to evaluation and treatment at the Professional Renewal Center in Lawrence, Kansas, which had issued 13 treatment and monitoring recommendations. As part of its reprimand in 2013, the Tennessee Board ordered respondent to comply with the 13 recommendations, and to enter into a contract with the Tennessee Medical Foundation

for no less than 18 months, to monitor his compliance with those recommendations. Respondent was also required to pay the Tennessee Board's costs of prosecution, in an amount not to exceed \$10,000.

Respondent's evidence

6. Respondent received his medical degree from Rush College in Chicago in 1983. He completed an internship in general surgery at the University of California, San Diego in 1984, and then went on to complete one year of residency training in anesthesia at the University of Miami, Jackson Memorial Hospital, in 1986, and a second year of residency training in anesthesiology at Rush Presbyterian St. Luke's Medical Center in 1986. In 1987, respondent completed a one-year fellowship in the Department of Anesthesia at Rush Presbyterian. From 1987 to 1995, respondent performed anesthesiology services and directed pain management centers in Orlando, Florida; Baytown, Texas; Stuttgart, Arkansas; and Morristown, Tennessee. Since July 2000, respondent has been the Medical Director at Morristown Pain Consultants. Respondent is married and has four children.

7. Respondent is board certified in anesthesiology. He is licensed to practice medicine in Tennessee, Florida, Texas, and California, and he has been licensed in Arkansas; it appears that respondent relinquished his Arkansas license, but the status of that license is not clear. Respondent has no history of prior license discipline in California, and there is no evidence of any prior license discipline in any other state.

8. In 2011, after he learned that the Tennessee Board had opened an investigation into complaints against him, respondent sought a multidisciplinary evaluation from the Professional Renewal Center (PRC). Following its four-day evaluation, PRC concluded that respondent had behavioral issues, possibly due to a personality disorder, despite apparently well-treated bipolar disorder. He also had problems with inattention and hyperactivity dating back to childhood; a history of marijuana use in the remote past; stressors at home; and he was poorly-organized with a limited capacity for trust and collaboration. PRC recommended that respondent participate in an "intensive treatment experience for professionals." Respondent elected to participate in the treatment process offered by PRC.

9. Respondent's treatment included individual and group therapy sessions with peers and with mental health practitioners. The therapy sessions included group psychotherapy, psychiatric follow-up sessions, an "Emotional Competency Group," an "Accessibility, Boundaries and Communications Skills Group," and a "Professional Roles and Relationships Group." Respondent participated in treatment sessions on July 9-13, 2012, and October 22-November 2, 2012. He then participated in twice-weekly, 90-minute telephonic peer group conferences as part of PRC's "Continuous Ongoing Professional Education" program (COPE).

In its discharge summary dated January 3, 2013, PRC reached the following Axis I diagnoses:

Complex PTSD

Alcohol Dependency, by patient history, in Full-sustained Remission

Marijuana Dependency, by patient history, in Full Remission

Bipolar Disorder, type II, Most Recent Episode Mixed

ADHD, by History

Asperger's Disorder

The staff at PRC concluded that respondent was not an impaired physician, and offered their opinion that his "prognosis is good and that he is able to continue the practice of medicine with reasonable skill and safety." They also concluded, however, that an aftercare program was needed, and that "[c]lose monitoring of and [respondent's] compliance with all aspects of this comprehensive aftercare plan will be critical to his ongoing success."

10. PRC established a 13-point aftercare program, the program that the Tennessee Board later incorporated into the terms of its reprimand. In summary, this program requires that respondent continue to participate in twice-weekly COPE peer group telephone conferences; establish and continue psychiatric treatment, including medication management for his bipolar disorder; abstain from the use of mood-altering substances, including alcohol, except those prescribed by his treating physicians; not self-prescribe medications, or obtain medications from colleagues; and enter into an 18-month contract with the Tennessee Medical Foundation (TMF) to monitor his participation in the aftercare program.

11. In February 2013, respondent entered into the monitoring contract with TMF. Under the contract, respondent must submit to random toxicology testing, maintain a work site monitor, and meet quarterly with his assigned case manager. The medical director of TMF is Rowland W. Gray, M.D. In a letter dated February 4, 2014, Dr. Gray reports that respondent has complied with all program requirements and that he has the program's "full advocacy." A condition of maintaining the program's "advocacy" is negative urine drug screens. Respondent testified that he has been tested and that his tests have been negative, an assertion consistent with Dr. Gray's letter.

12. In December 2012, respondent completed a continuing medical education course titled "Program for Distressed Physicians," for which he earned 47.5 hours of CME credit.

13. Respondent admits that the Tennessee Board's allegations against him are true. He states that he is "very regretful" of his past conduct, and he is embarrassed by it. Respondent feels that the treatment he has received over the past two years, particularly the peer group counseling, therapy and medication, has been very beneficial. He states that he has gained insight into his conduct, that he is in better control of his emotions, and he works better with his staff. Respondent feels that he has a good structure in place, and he recognizes that he has embarked on a lifetime process, not a process that ends after 18 months. Respondent's testimony on these points appeared to be sincere, and was credible.

14. Psychiatrist Kenneth O. Jobson, M.D., provides medication management for respondent. In a letter dated February 17, 2014, Dr. Jobson writes that he has prescribed lithium carbonate for respondent's bipolar disorder and that respondent has been compliant with all treatment recommendations. Dr. Jobson believes that respondent can practice medicine without restriction.

15. Michael Ellis, M.D., has worked with respondent as a peer for over eight years, and they are both members of the same religious institution. In a letter dated February 17, 2014, Dr. Ellis writes that he is aware of respondent's disciplinary history. In Dr. Ellis's opinion, respondent has used the discipline as an opportunity for self-improvement, and has worked hard to "conscientiously conduct himself in an appropriate manner toward others." Dr. Ellis believes that respondent can practice medicine safely without restriction.

16. Gastroenterologist Arvinder J. Sachdev, M.D., has known respondent for over 10 years. They have referred patients to one another. In an undated letter, Dr. Sachdev states that he has never seen respondent display any disruptive behavior. He is confident that respondent is practicing safely and does not pose a threat to the public. Dr. Sachdev does not address the events that gave rise to respondent's Tennessee discipline.

17. Mark Gary Blumenthal, M.D., M.P.H., has known respondent for almost 10 years. During that time, they have consulted with one another on patient care issues and, during part of 2009, Dr. Blumenthal worked with respondent in his practice. In a letter dated February 26, 2014, Dr. Blumenthal states that he is aware of respondent's Tennessee discipline but that, in his opinion, respondent's personal and professional character, and his professional demeanor, are above reproach. Dr. Blumenthal is "totally confident" that respondent can practice safely and does not pose a threat to the public.

18. On October 15, 2013, the Board of Medicine of the State of Florida approved a settlement agreement with respondent with respect to his Tennessee discipline. The agreement provides that if respondent returns to Florida to practice before his monitoring contract in Tennessee ends, he must undergo an evaluation and comply with any and all recommendations.

19. On February 7, 2014, the Texas Medical Board entered into a stipulated "Remedial Plan" with respondent, which requires respondent to take four hours of continuing medical education on the topic of risk management.

20. Respondent's professional liability insurer has informed him that he is uninsurable in light of the Tennessee Board's action, and that it will not renew his coverage when it expires in April 2014.

21. Respondent has not practiced in California since 1984 and, until this hearing, he had not been present in California since 1990. In a letter to the Board on December 12, 2011, respondent wrote "I have decided that I will not be renewing my California Medical License and would request that you accept this letter as official notification of my decision."

At hearing, respondent testified that he wanted to simplify his life and avoid the unnecessary expense of maintaining licenses in states where he did not intend to practice; respondent stated that he sent similar letters to Arkansas and Texas. At the time he sent his letter to this Board, however, respondent knew he was the subject of an investigation by the Tennessee Board.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. Respondent asserts that, under the federal and state constitutions, the Board lacks personal jurisdiction over him. He moves to dismiss the accusation on that ground. Respondent argues that because he has not been present in California since 1990, does not practice here, and does not advertise here, he does not have sufficient “minimum contacts” with the State of California for it to exercise jurisdiction based on conduct that occurred outside of California.

Respondent’s argument is not persuasive. Since 1987, respondent has maintained a California certificate to practice medicine in this state. It is true that respondent has allowed his certificate to expire. Under Business and Professions Code section 118, subdivision (b), however, the expiration of a license

shall not, during any period in which it may be renewed, restored, reissued or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

A medical certificate that has expired may be renewed at any time within five years after its expiration. (Bus. & Prof. Code, § 2427.) In this case, respondent’s certificate expired November 30, 2012, and the Board issued its accusation on May 31, 2013, well within the five-year period.

Respondent cites no authority to support his argument that his personal absence from the state deprives the board of jurisdiction to discipline his certificate. In essence, respondent’s argument is an invitation to declare Business and Professions Code section 118, subdivision (b), unconstitutional. The Board, however, has no power to declare a statute unconstitutional, or refuse to enforce it on the ground that it is unconstitutional, unless an appellate court has determined that the statute is unconstitutional. (Cal. Const., art. III, § 3.5, subd. (a).) Respondent has cited no case that holds Business and Professions Code section

118, subdivision (b), unconstitutional. Respondent's motion to dismiss the accusation for lack of personal jurisdiction is denied.

3. Respondent objects to the accusation under Government Code section 11506, subdivision (a)(3). That provision states that a respondent may object to an accusation on the ground that it is "so indefinite and uncertain that the respondent cannot identify the transaction or prepare his defense." The accusation in this case, however, clearly identifies the disciplinary action of the Tennessee Board as the transaction on which the accusation is based, and sets forth the provisions of the Business and Professions Code which authorize the Board to take disciplinary action against a physician based on out-of-state discipline. Respondent's objection is overruled.

4. Business and Professions Code section 141, subdivision (a), applies generally to licenses issued by agencies that are part of the Department of Consumer Affairs, such as the Board. It provides, in relevant part, as follows:

For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action by another state . . . for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board.

The disciplinary action of the Tennessee Board was based on acts substantially related to the practice of medicine. Cause exists under section 141 to take disciplinary action against respondent's certificate, by reason of the matters set forth in Finding 5.

5. Business and Professions Code section 2305, which applies specifically to licenses issued by the Board, provides in relevant part as follows:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state . . . that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

6. Respondent's conduct described in Finding 5a – being disrespectful toward his staff to the point that it disrupted the practice environment, and being verbally inappropriate to his patients – was unprofessional conduct and would have been grounds for disciplinary action in California. (See Bus. & Prof. Code, § 2234.) Cause exists under section 2305 to take disciplinary action against respondent's certificate, by reason of the matters set forth in Finding 5a.

7. The evidence failed to establish that the conduct described in Findings 5b or 5c would have been grounds for discipline in California. Cause was not established to take

disciplinary action against respondent pursuant to Business and Professions Code section 2305, based on that conduct.

8. Cause for discipline having been established, the issue is the appropriate level of discipline to impose. The Board has adopted guidelines to assist in the evaluation of that issue. (Manual of Model Disciplinary Orders and Disciplinary Guidelines, 11th Edition.) The guidelines state that, in out-of-state discipline cases, the minimum level of discipline should be the same as that for a similar violation in California, and that the maximum disciplinary action is revocation. The minimum recommended level of discipline for general unprofessional conduct is stayed revocation and five years' probation, subject to appropriate terms and conditions.

Although respondent does not intend to practice in California, he has the right to practice here if he wishes. In light of his conduct in Tennessee, a period of supervision is necessary to insure that he can practice safely, and the only mechanism available in California to maintain that oversight is through a period of probation. However, given the fact that respondent has complied with his Tennessee program for over a year and appears to have made a personal commitment to the program, a five-year probationary period in California is not warranted. Similarly, given the extensive psychiatric evaluation and treatment that respondent has undergone in Tennessee, and his negative drug and alcohol tests, the only optional conditions that are justified are those that require him to abstain from the use of alcohol, and to abstain from the use of controlled substances that are not prescribed for a bona fide condition. It would not be contrary to the public interest to allow respondent to maintain his California license, subject to a probationary period of three years and the imposition of appropriate terms and conditions.

9. Respondent asks that the Board modify its standard condition concerning "Non-practice While on Probation," so that his practice in Tennessee will count toward satisfying his California term of probation. Doing so, however, would deprive California of its independent right and obligation to supervise respondent, and would undermine the Board's interest in promoting uniformity and fairness in its disciplinary proceedings. Respondent's request to modify the Board's standard condition is denied.

ORDER

Physician's and Surgeon's Certificate No. G 59872 issued to respondent Michael Alan Chavin, M.D., is revoked. However, revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Controlled Substances - Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code

section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

2. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

3. Notification

Within seven (7) days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

4. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

5. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

6. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

7. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

8. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

9. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

10. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

11. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke

probation and carry out the disciplinary order that was stayed. If an accusation, or petition to revoke probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.


12. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: March 28, 2014



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 31, 2013
BY [Signature] ANALYST

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

Case No. 16-2013-230523

13 **MICHAEL ALAN CHAVIN, M.D.**
1639 W. Morris Blvd.
14 Morristown, TN 37814

A C C U S A T I O N

15 Physician's and Surgeon's
Certificate No. G59872

16 Respondent.

17
18 The Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
21 California, Department of Consumer Affairs, and brings this Accusation solely in her official
22 capacity.

23 2. On April 13, 1987, Physician's and Surgeon's Certificate No. G59872 was issued by
24 the Medical Board of California to Michael Alan Chavin, M.D. (Respondent). Said certificate is
25 delinquent, having expired on November 30, 2012.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Medical Board of California¹, (the Board) under the authority of the following sections of the California Business and Professions Code (Code) and/or other relevant statutory enactment:

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license to practice medicine issued by that state, that would have been grounds for discipline in California under the Medical Practice Act, constitutes grounds for discipline for unprofessional conduct.

C. Section 141 of the Code provides:

“(a) For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or by another country shall be conclusive evidence of the events related therein.

“(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by the board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.”

FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

4. On January 30, 2013, the Tennessee Board of Medical Examiners issued an Agreed Order regarding Respondent's license to practice medicine in Tennessee. The Agreed Order contains factual findings that Respondent owns and operates a pain management clinic; he engaged in disrespectful and inappropriate behavior toward his office staff and patients, to the

¹ The terms “Board” and “Division” or “Division of Medical Quality” mean the Medical Board of California.

1 point that it disrupted the medical practice and demonstrated anger management issues. He
2 sought appropriate medical treatment, and then underwent an evaluation at a peer assistance
3 health care organization, which resulted in his enrollment in a treatment program for disruptive
4 behavior. Respondent was also found to have inappropriately provided medical treatment to his
5 wife. Based on these findings, the Tennessee Board of Medical Examiners issued a reprimand,
6 and required Respondent to comply with the recommendations issued by the peer assistance
7 health care organization. A copy of the Agreed Order issued by the Tennessee Board of Medical
8 Examiners is attached as Exhibit A.

9 5. Respondent's conduct and the action of the Tennessee Board of Medical Examiners
10 as set forth in paragraph 4, above, constitute unprofessional conduct within the meaning of
11 section 2305 and conduct subject to discipline within the meaning of section 141(a).

12 **PRAYER**

13 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board issue a decision:

- 15 1. Revoking or suspending Physician's and Surgeon's Certificate Number G59872
16 issued to respondent Michael Alan Chavin, M.D.;
- 17 2. Revoking, suspending or denying approval of Respondent's authority to supervise
18 physician assistants;
- 19 3. Ordering Respondent, if placed on probation, to pay the costs probation monitoring;
20 and
- 21 4. Taking such other and further action as the Board deems necessary and proper.

22 DATED: May 31, 2013

23 
24 LINDA K. WHITNEY
25 Executive Director
26 Medical Board of California
27 Department of Consumer Affairs
28 State of California
Complainant

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EXHIBIT A

RECEIVED
2013 JAN 31 PM 3:29
SECRETARY OF STATE

STATE OF TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:)	BEFORE THE TENNESSEE BOARD
)	OF MEDICAL EXAMINERS
MICHAEL A. CHAVIN M.D.)	
RESPONDENT)	DOCKET NO. 17.18-117269A
)	
MORRISTOWN, TENNESSEE)	
TENNESSEE LICENSE NO. 32281)	

AGREED ORDER

This matter came to be heard before the Tennessee Board of Medical Examiners (hereinafter the "Board") on the 30th day of January, 2013, pursuant to a Notice of Charges issued against Michael A. Chavin, M.D. (hereinafter "Respondent") by the Division of Health Related Boards of the Tennessee Department of Health. (hereinafter the "State"). The State was represented by Mary Katherine Bratton, Assistant General Counsel. Respondent was represented by Robert J. Kraemer, Jr., Esq. After consideration of the Notice of Charges and presentation of counsel, the Board finds as follows:

1. Respondent agrees that presentation to and consideration of this Agreed Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this order not be ratified.
2. Respondent understands the nature of the charges herein alleged and that if proved at a hearing, such charges and allegations would constitute cause for imposing discipline upon Respondent's license issued by the Board.

3. Respondent is aware of each of Respondent's rights, including the right to a hearing on the charges and allegations, the right to appear personally and by counsel, the right to confront and cross-examine witnesses who would testify against Respondent, the right to testify and present evidence on Respondent's own behalf, as well as to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to contest the charges and allegations, and other rights which are accorded Respondent pursuant to the Administrative Procedures Act and other applicable laws, including the right to seek reconsideration, review by the Chancery Court, and appellate review.
4. In order to avoid the expense and uncertainty of a hearing, Respondent freely and voluntarily waives each and every one of these rights set forth above and admits the truth of the allegations herein contained. Respondent agrees that cause exists to discipline his license.
5. Respondent understands that by signing this Agreed Order, Respondent is enabling the Board to issue its order without further process. In the event that the Board rejects this Agreed Order for any reason, it will be of no force or effect for either party.

I. FINDINGS OF FACT

6. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number 32281 by the Board on January 4, 2000, which has a current expiration date of November 30, 2013.

7. Respondent owns, operates and provides medical services in a Tennessee Certified Pain Management Clinic (Morristown Pain Consultants) in Morristown, Tennessee, in which he diagnoses and treats chronic pain and also provides medical services, including Suboxone treatments to drug addicted patients.
8. During the course of Respondent's practice of medicine, over the last several years and strictly within the confines of his practice, Respondent has conducted himself towards his staff in a manner that was disrespectful and disruptive of the practice environment and that, in addition to being verbally inappropriate to patients, reflected potential anger management issues.
9. In recognition of the facts stipulated in Paragraph 8, as brought to his attention by the investigation conducted by the Department of Health, the Respondent voluntarily has done the following:
 - a. In 2010, sought and received mood stabilization medication prescriptions from his local primary care provider which he continues to this date:
 - b. In March of 2012 underwent a comprehensive multidisciplinary evaluation at the Professional Renewal Center (PRC), which is a peer assistance health care organization as contemplated by TENN. CODE ANN. § 63-1-150, located in Lawrence, Kansas:
 - c. Began and continues compliance with the treatment and aftercare recommendations resulting from the PRC evaluation, a copy of which is included in the discharge summary provided to and approved by the Board's Medical Director:
 - d. Is staying on target to successfully complete the PRC distributive continuing treatment program in 2013, having participated from July 9 through 13, 2012, and

October 22 through November 2, 2012, with another continuing treatment session scheduled for February 4-15, 2013:

- e. As part of his compliance with the PRC evaluation recommendations has engaged in online participation in two sessions each week of the PRC's COPE program;
 - f. Committed, at PRC's suggestion, to participation in a 360 multisource evaluation process to enhance his weekly participation in the PRC's COPE program; and
 - g. On June 20, 21, and 22, August 3, September 21, and December 14, 2012, attended and successfully completed a six (6) day Continuing Medical Education course entitled "Program for Distressed Physicians" at the University of Florida, College of Medicine's Springhill Health Center.
10. Respondent has performed several lumbar facet and joint block injections on his wife, implanted a spinal cord stimulator in February 2010, and revised the placement of the stimulator in May 2010. Respondent recorded and maintained a full set of complete records memorializing the medical services and care provided to his wife. Respondent avers that he has not provided any medical care for her since 2010.
11. Respondent accessed an employee's controlled substance monitoring database information when she failed a urine drug screen, admitted to other personnel that she could not pass a subsequent one and upon representation that she intended to enter into his Suboxone treatment program. That CSMD printout was placed in the employee's personnel file.

II. CONCLUSIONS OF LAW

The facts stipulated to in the Stipulations of Fact are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

12. The facts stipulated in paragraphs 8 and 11, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(1):

Unprofessional, dishonorable or unethical conduct.

13. The facts stipulated in paragraphs 8 and 10, *supra*, constitute a violation of TENN. COMP. R. & REGS. Rule 0880-02-.14(8):

Code of Ethics – The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its code of medical ethics the "Code of Medical Ethics" published by the A.M.A. Council on Ethical and Judicial Affairs as it may, from time to time, be amended.

14. The facts stipulated in paragraph 8, *supra*, constitute a violation of the Principles of Medical Ethics 9.123, Disrespect and Derogatory Conduct in the Patient-Physician Relationship, and 10.01, Fundamental Elements of the Patient-Physician Relationship, of the Code of Medical Ethics of the American Medical Association.
15. The facts stipulated in paragraph 10, *supra*, constitute a violation of the Principles of Medical Ethics 8.19, Self-Treatment or Treatment of Immediate Family Members, of the Code of Medical Ethics of the American Medical Association.

III. POLICY STATEMENT

The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety, and welfare of the citizens of the State of Tennessee.

IV. ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

16. The Tennessee medical license of Michael A. Chavin, M.D., license number 32281, is hereby **REPRIMANDED**.
17. Respondent shall timely comply with all thirteen (13) treatment and/or monitoring recommendations contained in the Discharge Summary issued by the PRC, and any future treatment and/or monitoring recommendations issued by the PRC. This shall include entering into and complying with a monitoring contract with the Tennessee Medical Foundation (TMF), the duration of which shall be agreed upon by PRC and TMF, but no less than eighteen (18) months from the date of this order, with proof of compliance with PRC's treatment and/or monitoring recommendations submitted on a quarterly basis by TMF directly to the **Board's Disciplinary Coordinator** at the following address: The Division of Health Related Boards, Tennessee Department of Health, 227 French Landing, Suite 300, Heritage Place Metro Center, Nashville, Tennessee 37243. Respondent shall authorize a copy of the Discharge Summary and recommendations to be released to TMF to facilitate this monitoring.

18. The forty-seven and half (47.5) hours of category one Continuing Medical Education (CME) credit Respondent earned from the "Program for Distressed Physicians" at the University of Florida, College of Medicine's Springhill Health Center, shall not be counted towards Respondent's annual CME requirements as required by Rule 0880-02-.19 of the TENN. COMP. R. & REGS. Furthermore, any CME credit received through participation in PRC recommended programs shall be in addition to Respondent's annual CME requirements.
19. Respondent must pay, pursuant to TENN. CODE ANN. § 63-6-214(k) and Rule 0880-2-.12(1)(j) of the TENN. COMP. R. & REGS., the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. Said costs shall not exceed ten-thousand dollars (\$10,000.00).
20. Respondent understands that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank (H.I.P.D.B.) and/or similar agency.

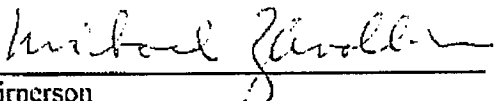
IV. NOTICE

21. Any and all costs shall be paid in full within thirty (30) days from the issuance of the Assessment of Costs. Payment shall be made by certified check, cashier's check, or money order, payable to the State of Tennessee, Department of Health. Any and all payments shall be forwarded to the Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, Heritage Place Metro Center, 227 French Landing, Suite 201 Nashville, Tennessee 37243. A notation shall be placed on

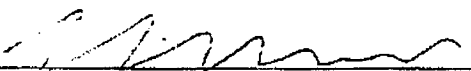
said money order or such check that it is payable for the Costs of Michael A. Chavin.

M.D., Docket No. 17.18-117269A.

This **AGREED ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 30 day of January, 2013.

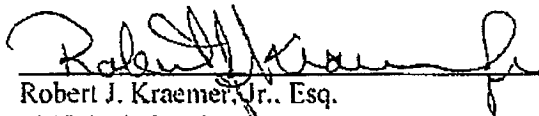

Chairperson
Tennessee Board of Medical Examiners

APPROVED FOR ENTRY:



Michael A. Chavin, M.D.
Respondent
Tennessee License Number 32281
P.O. Box 1734
Morristown, Tennessee 37816

1/15/13
DATE



Robert J. Kraemer, Jr., Esq.
1209 Cedarbend Drive
Mt. Juliet, Tennessee 37122
Attorney for Respondent

1/25/13
DATE

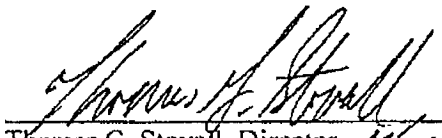


Mary Katherine Bratton (B.P.R. #030083)
Assistant General Counsel
Office of General Counsel
Tennessee Department of Health
Plaza I, Suite 210
220 Athens Way
Nashville, Tennessee 37243
(615) 532-6565

1/30/13
DATE

CERTIFICATE OF FILING

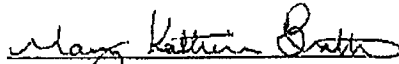
This Order was received for filing in the Office of the Tennessee Secretary of State, Administrative Procedures Division, and became effective on the 31st day of January, 2013.


Thomas G. Stovall, Director
Administrative Procedures Division

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing has been served upon Respondent, Michael A. Chavin, M.D., through Respondent's attorney, Robert J. Kraemer, Jr., Esq., 1209 Cedarbend Drive, Mt. Juliet, Tennessee 37122, by delivering the same in the United States regular mail, with sufficient postage thereon to reach its destination.

This the 1 day of ~~January~~, 2013.
February


Mary Katherine Bratton
Assistant General Counsel